IC 3-11.7-5
Chapter 5. Counting Provisional Ballots

IC 3-11.7-5-1
Requirements and deadlines for counting ballots
Sec. 1. (a) After the close of the polls, provisional ballots shall be counted as provided in this chapter.

(b) Notwithstanding IC 3-5-4-1.5 and any legal holiday observed under IC 1-1-9, all provisional ballots must be counted by not later than noon on the Monday following the election.
As added by P.L.126-2002, SEC.87. Amended by P.L.14-2004, SEC.153.

IC 3-11.7-5-2
Criteria for determining validity of ballots
Sec. 2. (a) Except as provided in section 5 of this chapter, if the county election board determines that all the following apply, a provisional ballot is valid and shall be counted under this chapter:
(1) The affidavit executed by the provisional voter under IC 3-11.7-2-1 is properly executed.
(2) The provisional voter is a qualified voter of the precinct.
(3) Based on all the information available to the county election board, including:
(A) information provided by the provisional voter;
(B) information contained in the county's voter registration records; and
(C) information contained in the statewide voter registration file;
the provisional voter registered to vote at a registration agency under this article on a date within the registration period.

(b) If the provisional voter has provided information regarding the registration agency where the provisional voter registered to vote, the board shall promptly make an inquiry to the agency regarding the alleged registration. The agency shall respond to the board not later than noon of the first Friday after the election, indicating whether the agency's records contain any information regarding the registration. If the agency does not respond to the board's inquiry, or if the agency responds that the agency has no record of the alleged registration, the board shall reject the provisional ballot. The board shall endorse the ballot with the word "Rejected" and document on the ballot the inquiry and response, if any, by the agency.

(c) This subsection applies after December 31, 2003. Except as provided in section 5 of this chapter, a provisional ballot cast by a voter described in IC 3-11.7-2-1(b) is valid and shall be counted if the county election board determines under this article that the voter filed the documentation required under IC 3-7-33-4.5 and 42 U.S.C. 15483 with the county voter registration office not later than the closing of the polls on election day.
As added by P.L.126-2002, SEC.87. Amended by P.L.209-2003, SEC.176.

IC 3-11.7-5-3
Consequence for ballots not satisfying criteria

Sec. 3. (a) If the board determines that the affidavit executed by the provisional voter has not been properly executed, that the provisional voter is not a qualified voter of the precinct, or that the provisional voter did not register to vote at a registration agency under this article on a date within the registration period, the board shall make the following findings:

(1) The provisional ballot is invalid.

(2) The provisional ballot may not be counted.

(3) The provisional ballot envelope containing the ballots cast by the provisional voter may not be opened.

(b) If the county election board determines that a provisional ballot is invalid, a notation shall be made on the provisional ballot envelope: "Provisional ballot determined invalid.".

As added by P.L.126-2002, SEC.87. Amended by P.L.209-2003, SEC.177.

IC 3-11.7-5-4
Valid ballots; opening and marking

Sec. 4. If the board determines that a provisional ballot is valid under section 2 of this chapter, the provisional ballot envelope shall be opened. The outside of each provisional ballot shall also be marked to identify the precinct and the date of the election of the ballots.

As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-5
Ballots rejected; absence of poll clerks' initials

Sec. 5. (a) If any ballot cast by a provisional voter does not contain the initials of the poll clerks, the ballot shall, without being unfolded to disclose how the ballot is marked, be endorsed with the word "Rejected".

(b) All rejected provisional ballots shall be enclosed and securely sealed in an envelope on which is written "Rejected provisional ballots.".

As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-6
Order of counting valid ballots

Sec. 6. The valid provisional ballots printed by the election division shall be counted before counting the valid provisional ballots printed by the county election board.

As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-7
Counting ballots by laying on table

Sec. 7. The provisional ballots shall be counted by laying each ballot upon a table in the order in which the ballots were opened.

As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-8

Reading names of candidates; ballot questions

Sec. 8. (a) During the counting of the ballots, one (1) counter shall read the name of the candidates and ballot questions voted for from the ballots.

(b) A:

(1) member of the county election board who is not a member of the same political party as the counter; or

(2) representative designated by the member;

shall view the ballots as the names and ballot questions are read.

As added by P.L.126-2002, SEC.87. Amended by P.L.209-2003, SEC.178.

IC 3-11.7-5-9

Protest counting of ballots

Sec. 9. During the counting of the ballots:

(1) the counter counting the ballots;

(2) a member of the county election board; or

(3) a representative designated by the member;

may protest the counting of any ballot or any part of a ballot.

As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-10

Referral of protested ballot to county election board

Sec. 10. If the counters cannot agree whether to count a ballot following a protest under section 9 of this chapter, the question shall be referred to the county election board for a decision.

As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-11

Counters signing protested ballots

Sec. 11. Following a decision by the counters or the county election board, the counters shall sign each protested ballot.

As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-12

Noting whether protested ballot counted

Sec. 12. If a ballot or any part of a ballot is protested and the protest is resolved, the counter immediately shall write on the back of the protested ballot the word "counted" or "not counted", as appropriate.

As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-13

Separate counting of ballots from other precincts

Sec. 13. A counter may not count provisional ballots for a precinct under this chapter while counting provisional ballots for any other precinct.

As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-14
Counting of ballots by more than one set of counters
Sec. 14. (a) This section applies if at least two (2) sets of counters in a county are counting provisional ballots under this chapter.

(b) A set of counters may count provisional ballots from a precinct while another set of counters is counting provisional ballots from another precinct in the county if each set of counters counts the ballots in compliance with section 8 of this chapter.
As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-15
Counting write-in ballots
Sec. 15. (a) This section applies to the counting of write-in provisional ballots.

(b) If a voter writes an abbreviation, a misspelling, or other minor variation instead of the correct name of a candidate or political party, that vote shall be counted if the intent of the voter can be determined.

(c) If a voter casts a ballot under this section for President or Vice President of the United States and writes in the name of a candidate or political party that has not certified a list of electors under IC 3-10-4-5, the vote for President or Vice President of the United States is void. The remaining votes on the ballot may be counted.

(d) IC 3-12-1-7 applies to write-in provisional ballots.
As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-16
Certificate of provisional vote count
Sec. 16. When all the votes have been counted, the counters shall prepare a certificate stating the number of votes that each candidate received for each office and the number of votes cast on each public question.
As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-17
Entry and memorandum of vote count
Sec. 17. The number of votes that each candidate and public question received shall be written in words and numbers. The counters shall prepare a memorandum of the total votes cast for each candidate and on each public question and ensure that each member of the county election board receives a copy of the memorandum.
As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-18
Delivery of certificates and tally papers to county election board
Sec. 18. The counters shall deliver the certificates prepared under section 16 of this chapter and the tally papers to the county election board immediately upon the tabulation of the vote in each precinct.
As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-19

Securing ballots, certificates, and tally papers; delivery
Sec. 19. As soon as the ballots have been counted, the counters shall do the following in the presence of the county election board:
(1) Place in a strong paper envelope or bag the following:
(A) All provisional ballots, voted and spoiled.
(B) All provisional ballots:
(i) determined invalid under section 3 of this chapter; or
(ii) rejected under section 5 of this chapter.
(C) All protested and uncounted provisional ballots.
(D) All provisional ballot envelopes.
(E) All executed affidavits relating to the provisional ballots.
(F) The tally papers.
(2) Securely seal the envelope or bag.
(3) Have both counters initial the envelope or bag.
(4) Plainly mark on the outside of the envelope or bag in ink the precinct in which the provisional ballots were cast.
(5) Deliver the envelope or bag to the circuit court clerk.
(6) Notify the circuit court clerk of the number of ballots placed in the envelope or bag.
As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-20
Oath of ballot counters
Sec. 20. Upon delivery of the envelope or bag to the circuit court clerk, each counter shall take and subscribe an oath before the clerk stating that the counter:
(1) securely kept the ballots and papers in the envelope or bag;
(2) did not permit any person to open the envelope or bag or to otherwise touch or tamper with the ballots; and
(3) has no knowledge of any other person opening the envelope or bag.
As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-21
Filing ballot counters' oaths
Sec. 21. The circuit court clerk shall file the oath taken under section 20 of this chapter with the clerk's other election documents.
As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-22
Secure storage of ballots and papers
Sec. 22. The circuit court clerk shall place the envelope or bag in a receptacle provided by the county executive with two (2) different locks.
As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-23
Locks on stored ballots and papers
Sec. 23. The circuit court clerk shall do the following:
(1) Lock the receptacle provided under section 22 of this

chapter.
  (2) Retain one (1) key to one (1) lock of the receptacle.
  (3) Give one (1) key to the other lock of the receptacle to the
  member of the county election board who is not a member of
  the same political party as the clerk.
As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-24
Time for storage of ballots and papers
  Sec. 24. The circuit court clerk shall preserve the receptacle
containing the envelope or bag in the clerk's office for the period
required under IC 3-10-1-31 or IC 3-10-1-31.1.
*As added by P.L.126-2002, SEC.87. Amended by P.L.14-2004,
SEC.154.*

IC 3-11.7-5-25
Time for retention of ballots and papers when election contested
  Sec. 25. If the election is contested, the clerk shall preserve the
receptacle containing the envelope or bag as long as the contest is
undetermined. During that period, the clerk shall keep the receptacle
securely locked, subject only to an order of the court trying a contest.
As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-26
Destruction of stored ballots and papers
  Sec. 26. When permitted under IC 3-10-1-31 or IC 3-10-1-31.1,
the clerk and a county election board member of the opposite
political party shall remove the envelope or bag from the receptacle
and destroy the envelope or bag.
*As added by P.L.126-2002, SEC.87. Amended by P.L.14-2004,
SEC.155.*

IC 3-11.7-5-27
Contract with state educational institution for disposal of ballots
  Sec. 27. A county election board may contract with a state
educational institution (as defined in IC 20-12-0.5-1) to dispose of
the ballots. The contract must provide that:
  (1) the ballots will be used by the state educational institution
  to conduct election research; and
  (2) the state educational institution may not receive any ballots
  under this section until the period for retention under
  IC 3-10-1-31 or IC 3-10-1-31.1 has expired.
*As added by P.L.126-2002, SEC.87. Amended by P.L.14-2004,
SEC.156.*

IC 3-11.7-5-28
News media certificate of provisional ballot totals
  Sec. 28. Immediately upon completion of the vote count, the
counters shall make and sign a certificate for the news media
showing the total number of provisional ballot votes received by each

candidate and on each public question in the precinct.
As added by P.L.126-2002, SEC.87.

IC 3-11.7-5-29
Delivery of news media certificate
   Sec. 29. The counters shall deliver the certificate to the circuit court clerk as soon as the certificate is completed. The circuit court clerk shall deliver the certificate made for the news media to any person designated to receive the certificate by the editors of the newspapers published in the county or by the managers of the radio and television stations operating in the county immediately upon the completion of the certificate, but not before the closing of the polls.
As added by P.L.126-2002, SEC.87.